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Report of the Working Group on Enforced or Involuntary Disappearances

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Executive summary

The report submitted by the Working Group corresponding to 1999 again indicates further developments of two basic features of the situation of enforced or involuntary disappearances in the world [1]

First was the continuation of the practice of disappearances in a number of countries. During last year, the Working Group received information on 300 new cases of disappearances which occurred in 23 countries, 115 of these cases occurred in 1999. At the moment, the Working Group has 46,054 outstanding cases on its registers. During 1999, 125 cases were transmitted by the Working Group to the Governments of 19 countries by way of its urgent action procedure. (The highest number of cases of enforced or involuntary disappearances in 1999 occurred in Indonesia (50) and Colombia (27), the Working Group transmitted to the Government of Algeria 146 cases of disappearance, one of which occurred in 1999).

Second, the process of clarification of cases, especially cases which were transmitted more than 10 years ago, is becoming slower. In spite of satisfactory cooperation with the Working Group from a great number of countries, the fact remains that the attitude of most Governments towards investigating and to clarifying the outstanding cases has not improved. In the period under review (1999), out of 69 countries with unclarified cases, the Governments of 34 countries have not communicated at all with the Working Group.

In its report, the Working Group has recommended to the Commission on Human Rights that it should call upon all the States with outstanding cases to adopt proper measures to improve the process of clarification of cases.

The report also points out that impunity continues to be one of the main causes of disappearances and also the major obstacle in the process of clarification. The Working Group reiterates that the Declaration on the Protection of All Persons from Enforced Disappearance obliges all States to declare all acts of enforced disappearance offences in their domestic criminal law, to promptly and thoroughly investigate all allegations of enforced disappearance and to bring the perpetrators to justice.

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[1] Since its creation in 1980, the Working Group has submitted a report annually to the Commission on Human Rights, starting at the Commission's thirty-seventh session. The document symbols of the previous 17 reports are as follows: E/CN.4/1435 and Add.1, E/CN.4/1492 and Add.1, E/CN.4/1983/14, E/CN.4/1984/21 and Add.1 and 2, E/CN.4/1985/15 and Add.1, E/CN.4/1986/18 and Add.1, E/CN.4/1987/15 and Corr.1 and Add.1, E/CN.4/1988/19 and Add.1, E/CN.4/1989/18 and Add.1, E/CN.4/1990/13, E/CN.4/1991/20 and Add.1, E/CN.4/1992/18 and Add.1, E/CN.4/1993/25 and Add.1, E/CN.4/1994/26 and Corr.1 and 2 and Add.1, E/CN.4/1995/36, E/CN.4/1996/38, E/CN.4/1997/34, E/CN.4/1998/43, and E/CN.4/1999/62 and Add.1 and Add.2. The relevant resolutions of the Commission adopted at its last session are resolutions 1999/16, 1999/27, 1999/33, 1999/34 and 1999/41.

As a result of the current limitations in its resources and staff, together with the need to reduce the length of its report, the Working Group has not included some important sections contained in its previous reports, such as those referring to the implementation of the Declaration, as well as general comments on its articles and observations on the draft international convention on the prevention and punishment of enforced disappearances. Also, it has not been possible to include concluding observations in the country chapters.

In its report, the Working Group expresses again its serious concern about its ability in the future, with the present limited financial resources and seriously limited staff, to carry out the various mandates assigned to it by the Commission.

The report includes the separate opinion of two members of the Working Group, Mr. Diego Garcia-Sayan and Mr. Manfred Nowak, who strongly objected to the fact that the report had been limited to 32 pages as requested by the General Assembly.

Introduction

1 The present report of the Working Group on Enforced or Involuntary Disappearances is submitted pursuant to Commission on Human Rights resolution 1999/38, entitled "Question of enforced disappearances".

2 In addition to its original mandate, which is to act as a channel of communication between the families of disappeared persons and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and the whereabouts of the disappeared persons clarified, the Working Group has been entrusted by the Commission with various other tasks. In particular, the Working Group is to monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter referred to as the Declaration).

3 The number of countries with outstanding cases of alleged disappearance was 69 in 1999. During the period under review, the Working Group received 300 new cases of disappearance in 23 countries, 115 of which allegedly occurred in 1999. The total number of cases transmitted by the Working Group to Governments since the Group's inception stands at 49,070. The total number of cases being kept under active consideration, as they have not yet been clarified, now stands at 46,054.

4 As in previous years, the Working Group has continued to apply the urgent action procedure in cases that allegedly occurred within the three months preceding the receipt of a complaint. This year the Working Group sent urgent action appeals in respect of 125 cases to the Governments of 19 countries (see para. 14).

5 The Working Group regrets that out of the 69 countries with unclarified cases, the Governments of 34 countries have not communicated at all with the Group during the period under review.

6 As in the past, the present report reflects only communications or cases examined before the last day of the third annual session of the Working Group, which was 3 December 1999. Urgent action cases which may have to be dealt with between that date and the end of the year, as well as communications received from Governments and processed after 3 December 1999, will be reflected in the Working Group's next report.

7 Owing to serious limitations in its resources and inadequate staff, together with the requested reduction of pages of this report, the Working Group has not been able to include in the present report some very important sections, such as the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance, including general comments on its provisions, as well as observations on the draft international convention on the prevention and punishment of enforced disappearances. Also, it has not been possible to include observations in the country chapters.

8 The Working Group has faced very serious shortages in the staff servicing its mandates, rendering it almost impossible for the Group to complete all aspects of its mandates in an adequate manner. Therefore, the Working Group expresses serious concern about its ability in

the future, with the present limited financial and human resources, to carry out the various mandates assigned to it by the Commission on Human Rights. Here, the Working Group expresses its deep appreciation of the work of the staff which was carried out in spite of the difficulties referred to above.

I. ACTIVITIES OF THE WORKING GROUP IN 1999

A. Meetings and missions

9. The Working Group held three sessions in 1999. The fifty-seventh session was held in New York from 10 to 14 May, and the fifty-eighth and fifty-ninth sessions were held in Geneva from 30 August to 3 September and from 24 November to 3 December, respectively. During these sessions, the Working Group met with official representatives of the Governments of Angola, Argentina, Guatemala, Kuwait, Mexico and Nepal.

10. In addition, the Working Group met with representatives of human rights organizations, associations of relatives of missing persons and families or witnesses directly concerned with reports of enforced disappearances.

11. By letter dated 19 November 1997, the Government of the Islamic Republic of Iran invited the Working Group to visit that country. The Working Group accepted the invitation and a mutually convenient date is being sought.

12. As reported last year, to date the Working Group has received no reply from the Government of Iraq to its letter dated 21 July 1995 requesting a visit.

13. The Working Group represented by one of its members, Mr. Manfred Nowak, undertook a mission to Sri Lanka from 25 to 29 October 1999. His report, as adopted by the Working Group, is contained in addendum 1 to the present report.

B. Communications

14. During the period under review, the Working Group transmitted 300 new cases of enforced or involuntary disappearance to the Governments of Algeria (146), Belarus, Brazil, China, Colombia, the Democratic Republic of the Congo, Ethiopia, Honduras, India, Indonesia, Iran (Islamic Republic of), Jordan, the Libyan Arab Jamahiriya, Mexico, Morocco, Nepal, Pakistan, the Philippines, Sri Lanka, the Sudan, Tunisia, Turkey and Uzbekistan. Of these, 125 were sent under the urgent action procedure.

15. Of the newly reported cases, 115 allegedly occurred in 1999 and relate to Algeria, Belarus, Brazil, China, Colombia, the Democratic Republic of the Congo, Ethiopia, Honduras, Indonesia (50), Iran (Islamic Republic of), Jordan, Mexico, Nepal, the Philippines, Sri Lanka, the Sudan, Turkey and Uzbekistan.

16. During the same period, the Working Group clarified 70 cases concerning Brazil, China, Colombia, the Democratic Republic of the Congo, Guatemala, Honduras, India, Indonesia, Lebanon, Mexico, Nepal, the Philippines, Sri Lanka, South Africa, Tunisia and Turkey.

17. As in previous years, the Working Group received reports and expressions of concern from non-governmental organizations, associations of relatives of disappeared persons, and from individuals about the safety of persons actively engaged in the search for missing persons, in reporting cases of disappearance or in the investigation of cases. In some countries, the mere fact of reporting a disappearance entailed a serious risk to the life or security of the person making the report or to his or her family members. In addition, individuals, relatives of missing persons and members of human rights organizations were frequently harassed and threatened with death for reporting cases of human rights violations or investigating such cases.

18. Taking into account the ever-increasing number of United Nations field operations with human rights components and field offices of the High Commissioner for Human Rights, the Working Group has continued this year to address itself to these offices in an effort to take advantage of their unique position on the ground in order to improve its information flow with regard to disappearances.

C. Methods of work

19. During its fifty-eighth session, at the request of several non-governmental organizations, the Working Group met with their representatives to discuss and possibly review its methods of work. A number of representatives underlined the importance of the work carried out by the Working Group in seeking the whereabouts of disappeared persons and, in particular, the effectiveness of its urgent action procedure. However, they expressed concern about the decision taken by the Working Group in 1997 to discontinue consideration of cases where it considers that it can no longer play any useful role in trying to elucidate them, in particular if the source is no longer in existence, or in cases in which the families no longer have an interest in pursuing the matter. In this connection, a number of representatives pointed out that in many cases, the reasons why a source or family members might not respond to a query from the Working Group, or might not wish to pursue an investigation, might not be voluntary and that threats and intimidation might be involved. In such cases, they were of the view that the Working Group, before considering a case clarified, should make every effort to investigate the reasons behind the action or non-action of the source or the family concerned.

20. With regard to compensation in cases where a person reported to have disappeared is found to have been killed, many representatives were of the view that it was part of the humanitarian mandate of the Working Group not only to ensure that the family was informed and compensated, but also to reveal the place of burial to the family.

21. Many representatives of non-governmental organizations, including the Asian Federation against Involuntary Disappearances, Amnesty International, the Latin American Federation of Associations of Relatives of Disappeared Detainees, and the International Federation of Human Rights Leagues, asked for better communication between the source and the Working Group on action taken by the Group in individual cases, especially under the urgent action procedure.

22. At its fifty-ninth session, the Working Group decided to review its methods of work at its sixtieth session to be held in April 2000, taking into account the concerns expressed by the non-governmental organizations.

23 In accordance with the directive received by the Working Group to reduce the length of the annual report, the following new format has been adopted for the present report

Category A countries in which there were new cases of disappearance or clarifications

Category B countries on which the Working Group received comments from Governments and non-governmental organizations

Category C countries from which the Working Group received no information or comments

II COUNTRIES IN WHICH THERE WERE NEW CASES OF DISAPPEARANCES OR CLARIFICATIONS

Algeria

24 The Working Group transmitted 146 newly reported cases, one of which occurred in 1999 During the same period, the Working Group did not clarify any case

25 The Working Group received information from non-governmental organizations concerning non-compliance by the Government of Algeria with provisions of the Declaration on the Protection of All Persons from Enforced Disappearance

26 The Government of Algeria also provided information on 214 cases There were two kinds of response the missing persons had been neither questioned nor arrested, investigations to locate the missing persons were continuing The Government reiterated its willingness to cooperate with the Working Group and the other extra-conventional mechanisms of the Commission on Human Rights The Government advised the Working Group that offices had been established throughout the country since August 1998 to receive complaints from families, gather information on cases of enforced disappearances and respond when the investigations were completed The National Human Rights Monitoring Unit and the Ombudsman could be approached directly by the families They could also contact the judicial authorities

Belarus

27 One case was transmitted to the Government under the urgent action procedure It concerns a former Minister for Internal Affairs who was very active in the presidential campaign of an opposition leader No information was received from the Government concerning this case

Brazil

28. Four new cases were transmitted to the Government. Three of them concerned three persons who were reportedly arrested when they were leaving a carnival party. The cases were subsequently clarified on the basis of information provided by the source and transmitted to the Special Rapporteur on extrajudicial, summary or arbitrary executions. According to the information received, these persons were shot in the head at point-blank range with a high-calibre pistol similar to those used by the military police.

Cambodia

29. During the period under review, information was received from non-governmental organizations concerning non-compliance by the Government of Cambodia with provisions of the Declaration. Scores of people, possibly as many as 200, were arrested in this context. It was said that the authorities acknowledged only 22 arrests and claimed that 19 of those persons had been released. It was said that at least 20 people, and possibly more, were killed in the two weeks following the crackdown on opposition protests. It was feared that the unacknowledged prisoners may be among the dead. Cambodian authorities have reportedly denied that any of those killed were peaceful demonstrators.

China

30. Seven new cases were transmitted by the Working Group to the Government. One was sent under the urgent action procedure. Four cases concerned persons who were detained on 2 November 1998 in Huangzhou, Zhejian Province, by the security forces. They were reportedly detained because of their apparent involvement with Mr. Wang Youcai, a political dissident. The whereabouts of two other persons are unknown since 4 May 1998, when prison and police officers opened fire on prisoners staging a demonstration in Drapchi Prison.

31. The Government submitted information on 15 outstanding cases. The Working Group clarified nine cases on the basis of information previously received from the Government to which no objection was received from the source. The missing persons were found in prisons or in a re-education camp. In one case, the missing person had plotted to create an illegal organization, mounting illegal activities in Beijing, Shanghai and elsewhere and was assigned to three years' re-education.

Colombia

32. The Working Group transmitted 27 newly reported cases to the Government. During the same period, the Group clarified nine cases, five of them on the basis of information provided by the Government on which the sources did not make any observations during the six-month period. In one case, the missing person was found living at liberty. In two other cases, the corpses of these persons were found. Two other persons were handed over to a commission of the International Committee of the Red Cross (ICRC) in Doradal, Department of Antioquia. Four other cases were clarified on the basis of the information provided by the source in the sense that these persons, members of a human rights organization, were released by their captors.

33. The newly reported cases transmitted in 1999 occurred mainly in the communities of El Arenal, Villa Hermosa and Caño Seco, Department of Choco, Uraba region, on the river Sinu, Department of Cordoba, and in Barrancabermeja, Department of Santander. Most of the abductions and detentions leading to disappearances were carried out by members of paramilitary groups whose actions were believed to have been undertaken in complicity with, or to be supervised by, members of the security forces, very often in areas of heavy military presence. In one case, the police was allegedly responsible for the disappearance.

34. During the period under review, the Government made reference to 72 outstanding cases. Most of the communications contained details of legal proceedings carried out by various authorities dealing with the cases or requests for additional information. The Government of Colombia also reported that it had submitted to Congress a bill which defined the crime of enforced disappearance and established severe penalties.

35. The Working Group was informed that enforced or involuntary disappearances continued to occur and were the work mainly of paramilitary groups apparently operating in various parts of the country with the acquiescence of the security forces. It is alleged that the situation obtains in spite of the fact that in 1989 the Government of Colombia suspended the legal basis for the establishment of those groups and issued specific instructions to the armed forces to break them up. The Working Group was informed that in February 1999, the Public Prosecutor's Office complained that the security forces had served only 200 detention orders on members of paramilitary organizations. Special mention was made of the disappearance of eight people in May 1998 during the attack on Puerto Alvira, Marpinpan municipality, Department of Meta, by the paramilitary organization United Self-Defence Group of Colombia. It was reported that although the authorities had received several warnings that an attack on Puerto Alvira was imminent, they took no action to prevent it or to protect the inhabitants of the port.

36. The Working Group has received reports of other cases in which the security forces did not protect the civilian population or repel attacks against it by paramilitary groups. One such case involved internally displaced persons (from the southern department of Bolivar, in the Magdalena Medio region), who decided to return home after receiving government guarantees that they would be protected in the event of an attack by paramilitary groups. However, they were apparently again attacked in October 1998 and the special armed forces unit deployed to guarantee their security did not provide them with effective protection.

37. It was also reported that the cases of 25 people who had disappeared in Barrancabermeja in May 1998 after an attack by a paramilitary group remained unsolved. Apparently, evidence of complicity in the attack by members of the security forces is beginning to emerge.

38. The Working Group learned that in October 1998, Congress gave preliminary approval to a bill that would incorporate the crimes of enforced disappearance, massacre and genocide in the Penal Code. In June 1999, the Working Group received information that the bill incorporating the crime of enforced disappearance in Colombian domestic legislation would be the subject of a third debate.

39. Lastly, reference was also made to acts of intimidation, harassment and reprisal against members of non-governmental human rights organizations. The Working Group was informed

of the murders of Eduardo Umaña Mendoza and Jaime Garzon and of the death threats made by paramilitary groups against members of the Trujillo Association of Relatives of Victims and the Intercongregational Commission for Justice and Peace, which were obliged to shut down their offices in Trujillo on 19 February 1999. It was alleged that the Government provided no guarantees of protection to those non-governmental organizations and took no special measures to protect the lives of their members.

Democratic Republic of the Congo

40. Five new cases of disappearance were transmitted by the Working Group to the Government. All occurred in 1999 and were sent under the urgent action procedure. Two cases were subsequently clarified given that the source advised the Working Group that these persons, members of a human rights non-governmental organization, had been released.

41. The Working Group received allegations about the arrest and abduction of citizens for varying periods of time without charge or notification to their families. It was said that some persons had disappeared after being arrested by the Forces armees congolaises on suspicion of links with the Rassemblement congolais pour la democratie. Many victims were said to be from the Gombe, Binza, Ma Compagne, Ozone and Pigeon districts of Kinshasa. The governmental forces were also accused of being responsible for a series of abductions in the eastern region of the country, many of the victims said to be Hutu civilians.

Ethiopia

42. The Working Group transmitted a newly reported case of disappearance to the Government, which allegedly occurred in 1999 and was sent under the urgent action procedure. The case concerns an Eritrean citizen who was detained in the context of a denounced policy of forced repatriation to Eritrea.

Guatemala

43. The Government provided information on 16 individual cases. Eight cases were subsequently clarified by the Working Group. In six cases the missing persons were found living at liberty and held interviews with government officers. The deaths of the two other missing persons were verified through the corresponding death certificates and the Citizen's Registry in the Supreme Electoral Court.

44. The Working Group received allegations that the phenomenon of impunity continued to be considered the biggest obstacle to the enjoyment of human rights in Guatemala. It was indicated that little progress had been made in bringing to trial those responsible for enforced or involuntary disappearances committed in the past. Most cases had not been solved. Reference was made to the inefficiency of the investigations carried out by the Public Prosecutor's Office and to the defective functioning of the judicial system and the security forces.

45. With regard to article 19 of the Declaration, the Working Group was informed that no measures had been adopted providing redress or compensation for the families of the victims of enforced or involuntary disappearances.

46. Special concern was expressed about the fact that the causes and the circumstances of and responsibility for the murder in April 1998 of Monseñor Juan José Gerardi, the Coordinator of the Guatemalan Archdiocesan Human Rights Office, had not been established. It was indicated that Monseñor Gerardi had been beaten to death two days after presiding over the public presentation of the report entitled "Recovery of Historical Memory". The report collates and summarizes testimony collected throughout the country over a three-year period on cases of enforced or involuntary disappearance and of extrajudicial execution. The Working Group was also informed of the murder in May 1998 of Public Prosecutor Silvia Jerez Romero de Herrera who was investigating the disappearance of guerrilla leader Efraín Bámaca. It was mentioned that members of the security forces, or persons acting with their consent or acquiescence, might have been responsible.

47. The Working Group continued to receive reports of acts of harassment and intimidation and threats against members of non-governmental human rights organizations working to ascertain the fate or whereabouts of the thousands of victims of enforced disappearances. It learned that members of the Association of Relatives of Detained-Disappeared Persons in Guatemala (FAMDEGUA) had received death threats in July 1999 and been subjected to surveillance and various acts of hostility. It was also informed that on 14 February 1999 members of the Guatemalan Team of Forensic Anthropology were attacked and threatened by army soldiers while excavating unmarked graves in Huehuetenango. The team's work was part of the process of exhumation of the bodies of victims of enforced disappearance carried out by FAMDEGUA and other Guatemalan human rights organizations with a view to handing the mortal remains discovered over to the families for proper burial. There are said to be about 500 unmarked burial grounds in Guatemala.

48. It was alleged that there had been no follow-up to the work of the Commission for Historical Clarification in Guatemala and that the Commission's recommendations had not been implemented. It was said that the work had cost Guatemala and the international community effort, money and time and that there was no point in the recommendations being simply shelved. It was said that there had been no official reaction to some of the Commission's main recommendations, among them the establishment of a special body to trace disappeared persons and to ascertain the fate of all the victims of enforced disappearance during the armed conflict, many of them children.

49. It was also alleged that the Peace Agreement's provisions on measures to preserve the memory of the victims, on full redress and on compensatory measures had not been met.

Honduras

50. The Working Group transmitted a newly reported case of disappearance to the Government. It was subsequently clarified on the basis of the information provided by the source that the missing person had been found alive. The Working Group transmitted also a prompt intervention cable in favour of members of the Committee of Relatives of Detainees and Disappeared Persons who had reportedly been subjected to acts of harassment and intimidation.

India

51. The Working Group transmitted six newly reported cases to the Government, four of which occurred in 1998, one in 1996 and one in 1997. Four persons allegedly disappeared after having been arrested in Srinagar and one in Kashmir. During the same period, the Working Group clarified five cases on the basis of information previously received from the Government, on which no objection was received from the source. In three cases, the persons concerned were found living at liberty.

52. During the period under review, information concerning developments in India having an influence on the phenomenon of disappearance and the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance was received from non-governmental organizations. Allegations were also received of reports that police throughout the country do not often file required arrest reports. It was said that when family members seek information on detained relatives, all knowledge of the missing person is denied, in breach of article 10 of the Declaration relating to the provision of accurate information to the family members of a person deprived of liberty.

53. Particular concern was expressed with regard to the Terrorist and Disruptive Activities Act (TADA) which continues to be applied despite the announcement by the Government in May 1995 that its validity would not be extended. Impunity is said to prevail in Manipur. The Assam and Manipur Special Powers Act of 1958 reportedly confers on the armed forces broadly defined virtual immunity from prosecution.

54. It was said that the Protection of Human Rights Act of 1993 prevents the Indian National Human Rights Commission (NHRC) from inquiring into incidents older than one year. It has no power to investigate directly violations of human rights, no jurisdiction over violations committed by the armed and the security forces, no power to prosecute violators and no power to compensate victims. Allegations were also received according to which more than 2,000 persons are being held in long-term unacknowledged detention in interrogation centres and transit camps in the north-east of the country and in Jammu and Kashmir.

55. The Government of India pointed out that the allegations referred to above do not reflect the actual situation prevailing in India and contain sweeping generalizations which have no foundation in fact. As a democracy, India has an extensive range of institutions which ensure the protection of human rights. TADA had been allowed to lapse as a conscious decision on the part of the Government after significant public debate in the country. Since then, to the Government's knowledge, no one has been charged with offences under this Act. Only 1,022 persons continue to be detained under the Act at present. NHRC has powers under article 12 of the Protection of Human Rights Act, 1993 to inquire suo moto as well as on the basis of petitions submitted by victims. It can also utilize the services of any officer of the Central or state Governments as required for investigations. While it is true that article 19 of the Act provides for a separate procedure with regard to complaints of violation by members of the armed forces, this is merely an alternative procedure and does not provide any immunity. It is also incorrect to allege that laws such as the Armed Forces Special Powers Act provide security forces with immunity from prosecution. No law passed by the legislature can violate human rights guaranteed by the Constitution of India.

56 Regarding the situation in the State of Manipur, since the late 1970s, the Government reports that there has been cross-border terrorism carried out by militant elements and insurgents. These militants have been responsible for random killings, extortion, looting, abductions, etc. The Government has an obligation to uphold democracy, the rule of law and the human rights of its citizens and it is convinced that measures to combat terrorism must be carried out but only in accordance with human rights and national law standards. Violators of human rights at all levels are identified and punished in India.

Indonesia

57 The Working Group transmitted 50 newly reported cases of disappearance, all of which occurred in 1999 and mostly in East Timor and in Aceh. The cases were sent under the urgent action procedure. During the same period, the Working Group clarified a case on the basis of information previously received from the Government on which no objection was received from the source. The response pointed out that this person had been found imprisoned at the Biscas police station awaiting trial on charges of rebellion. Another case was clarified on the basis of the information provided by the source according to which the missing person had been released after being held in incommunicado military detention. The Government of Indonesia also submitted information on 27 other cases.

Iran (Islamic Republic of)

58 The Working Group transmitted four newly reported cases to the Government. Three cases were transmitted under the urgent action procedure.

59 The Working Group received allegations that relatives are not informed of the detention of their family members, in breach of article 10 of the Declaration. That was reportedly the case of several students detained during the demonstrations that took place in Tehran on 8 July 1999. It was alleged that in the following days, students, journalists and academics were taken from their homes without any arrest warrant and without any explanation or notice to their relatives. It was said that these actions placed the detainees outside the protection of the law. It was also reported that other detentions without a legal warrant took place in Mashhad and Rasht. Some of the detained persons were reportedly linked to the People's Mojahedin Organization of Iran.

Iraq

60 The Working Group transmitted to the Government of Iraq one new case. It was transmitted by the urgent action procedure. It concerns an Iraqi national who was allegedly abducted in Amman by the Iraqi Intelligence Services. He had reportedly travelled to Jordan to escape persecution in Iraq. In conformity with its methods of work, the case was also transmitted by the Working Group to the Government of Jordan. No response has been received so far from the Government of Iraq concerning this case.

Jordan

61. The Working Group transmitted to the Government the same case transmitted to the Government of Iraq (see para. 60 above). No response had been received so far from the Government of Jordan.

Libyan Arab Jamahiriya

62. One new case of disappearance was transmitted by the Working Group to the Government. It concerns a Lebanese citizen who was abducted in Tripoli on 31 August 1978 while he was accompanying a famous Shiite Muslim scholar visiting Libya.

Mexico

63. The Working Group transmitted six newly reported cases of disappearance to the Government, one of which occurred in 1999. All the cases were sent under the urgent action procedure. During the same period, the Working Group clarified 16 cases on the basis of information previously provided by the Government on which the sources had not made observations within the six-month period. The Working Group also decided to discontinue consideration of one case, since the brother of the missing person reiterated, on behalf of his relatives, his desire not to pursue the issue any further.

64. The newly reported cases occurred in Mexico, Federal District; in Villahermosa, State of Tabasco; in El Calvario community, Sabanilla municipality, State of Chiapas; and in the communities of Coyuca de Benitez and El Achotal, municipality of Atoyac de Alvarez, State of Guerrero. Members of the security forces were mentioned as responsible in one case, soldiers of the Mexican Army in three cases, and members of paramilitary groups, acting with the acquiescence of members of the security forces, in two cases. Specifically mentioned were the 60th Battalion of the army and the paramilitary group Paz y Justicia (Peace and Justice). Victims were peasants, the president of a coalition of municipal councils, a member of the Partido de la Revolucion Democratica (Democratic Revolution Party) and two members of the Peasant Organization of the Sierra del Sur (OCSS).

65. Representatives of the Mexican National Commission on Human Rights met with the Working Group at its fifty-seventh and fifty-eighth sessions and reiterated their desire to continue cooperating with the Group. They reported that between April and July 1999, a total of 46 working missions had been carried out by the National Commission to 20 states of the Federation. Two investigators had taken part in each visit, which generally lasted for a period of approximately five days.

66. The Working Group clarified 16 cases on which the sources had not made observations within the six-month period. In four cases, it was reported that the persons concerned had been found living at liberty; in one case, the person concerned had been found in detention at the Social Readaptation Centre of Cuilpancingo; in four cases, the mortal remains of the missing persons had been found.

67. Concern was expressed by several non-governmental organizations that the draft legislation on enforced disappearances drawn up by the Mexican National Human Rights Commission in May 1998 had still not been discussed by the Congress.

68. Special reference was made to the fact that the efforts of the National Human Rights Commission to ascertain the fate and whereabouts of hundreds of people who had disappeared during the 1970s and early 1980s had been fruitless in most cases. It was further pointed out that a fresh wave of disappearances had occurred between 1994 and 1997.

69. The Working Group was informed that a number of people who had temporarily disappeared in previous years and subsequently been located said that they had been subjected to torture and ill-treatment for long periods by their captors, who wanted them to confess or provide information. It was pointed out that the recent cases of enforced or involuntary disappearance had occurred in the context of government-run law and order, counter-insurgency or anti-drug trafficking operations.

70. Other allegations received refer to the existence in Mexico of a widespread culture of impunity, exacerbated by recourse to the system of military justice to investigate and prosecute members of the armed forces involved in human rights violations, by the alleged lack of independence of and the corruption in the ordinary judicial system and by acts of hostility, intimidation and reprisal committed by state and federal authorities against members of non-governmental organizations and opposition political parties.

71. It was also stated that the families of victims of enforced disappearances cannot obtain amparo from the judiciary, the judges allegedly not only refusing to investigate charges or prosecute those supposedly responsible, but refusing even to start the corresponding judicial investigations.

Morocco

72. The Working Group transmitted two cases to the Government, one of which reportedly occurred in 1997.

73. The Government of Morocco provided the Working Group with information on four cases, stating that the persons concerned had died. The Moroccan Conseil consultatif des droits de l'homme had clarified those cases. The Government promised to send the Working Group the corresponding death certificates.

74. The Working Group received allegations that the Government had taken no further steps to investigate the disappearances of more than 200 Moroccans and Saharawis who disappeared between 1984 and 1991, in breach of article 9 of the Declaration. It was said that the relatives of those disappeared had not received any kind of compensation, in violation of article 19 of the Declaration. It was further reported that a royal amnesty continued to protect those responsible for enforced or involuntary disappearances from legal prosecution. The failure on the part of the authorities to carry out serious investigations and to institute legal proceedings was also denounced.

Nepal

75. The Working Group transmitted six newly reported cases, five of which occurred in 1999, to the Government. All the cases were sent under the urgent action procedure. The victims were the Chairman of the Gorkha District Bar Association, a member of the Forum for the Protection of Human Rights, a member of the Nepal Bar Association and three persons who were reportedly re-arrested on the premises of the Parsa District Court immediately after the Court ordered their release. In all the cases the police was mentioned as the responsible force. The Working Group clarified two cases on the basis of the information provided by the Government referring that these two persons had been released on bail on 15 February 1999.

76. Non-governmental organizations informed the Working Group that police operations initiated on 26 May 1998 had led to an alarming deterioration in the country's human rights situation and to cases of enforced or involuntary disappearances. The operations were allegedly against members of the so-called Maoist Communist Party of Nepal, which had reportedly declared a "people's war" in February 1996.

77. A representative of the Government of Nepal met with the Working Group at its fifty-ninth session. He stated that strict instructions had been issued to police personnel not to take any action with a bias against anybody in the course of controlling terrorist activities. Police personnel had not resorted to acts of enforced disappearance or torture. None of the disappeared persons considered by the Working Group seems to have been arrested by the police. He added that people involved in terrorist activities have opted to go underground fearing the initiation of legal actions against them. The legal struggle against terrorism cannot create situations wherein citizens could be deprived of the enjoyment of their constitutional rights.

78. The Government of Nepal provided information on five outstanding cases announcing that the authorities are making every possible effort in the search of the disappeared persons.

Pakistan*

79. The Working Group transmitted to the Government three newly reported cases of disappearance, which occurred in December 1998 and were sent under the urgent action procedure. They concern three members of the Muhajir Quami Movement in Karachi who were arrested by law enforcement officers and taken to unknown destination.

80. With regard to these cases, the Government informed the Working Group that the authorities are investigating the facts of the matter and that if the allegations prove to be well founded, those responsible will be brought to justice.

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* Mr. Agha Hilaly did not participate in the decisions relating to this subsection of the report.

81. The Working Group received allegations that, in breach of article 10 of the Declaration, disappeared persons continued to be unaccounted for because of the lack of investigation into the cases by the authorities. It was also alleged that authorities are usually unable to bring perpetrators of enforced disappearances to justice, as provided for in article 14 of the Declaration.

Philippines

82. The Working Group transmitted three newly reported cases, one occurred in 1999. During the same period, the Working Group clarified two cases on the basis of information provided by the source and one on the basis of information provided by the Government on which no observations were received from the source within a period of six months.

83. The three newly reported cases transmitted in 1999 concern two persons who were detained by army officers in Nasugbu, Batangas, on suspicion of being members of the so-called Communist New Peoples Army. They were interrogated and reportedly handed over to the Mobile Force Company of the Philippine National Police (PNP) base in Palico. However, the PNP denied any knowledge of the arrest. The other victim is a trade union organizer for the Citizen's Campaign against Criminalization of Political Detainees who was reportedly detained by members of the army in Bagong barrio, Caloocan City, Metro Manila.

Sri Lanka

84. The Working Group transmitted seven newly reported cases, two of which occurred in 1999. All the cases were sent under the urgent action procedure. During the same period, the Working Group clarified the two cases that reportedly occurred in 1999 on the basis of information submitted by the source according to which the persons concerned were released after 39 days of unacknowledged detention in the People's Liberation Organization of Tamil Eelam (PLOTE) camp at Kovilkulam Junction.

85. Five of the newly reported cases concerned displaced persons residing at the Veppankulam camp in Vavuniya district who were abducted by members of an armed Tamil group opposed to the Liberation Tigers of Tamil Eelam, allegedly acting with the acquiescence of the security forces. Local investigations have so far given no indication as to their whereabouts.

86. At the invitation of the Government of Sri Lanka, a member of the Working Group, Mr. Manfred Nowak, and the Working Group's Acting Secretary visited Sri Lanka from 25 to 29 October 1999. The report on the visit is contained in addendum 1 to the present report.

Sudan

87. The Working Group transmitted three newly reported cases. The cases occurred in 1999 and were sent under the urgent action procedure.

88. The Government provided information on two cases, stating that one of the persons concerned was currently leading a normal life as a bishop and that the other missing person had

been released from prison in April 1997. The Working Group was unable to clarify the first of the cases in view of the discrepancy in the occupation of the person referred to by the source and the Government and to the fact that the Government had provided three different dates of his release. With regard to the second case, no information was provided on the current whereabouts of the missing person.

Tunisia

89. The Working Group transmitted one new case under the urgent action procedure. It concerns a woman who allegedly disappeared in December 1998 following her release from her place of detention in Mannouba prison in Tunis. The case was subsequently clarified on the basis of the information provided by the Government that this person was still serving her sentence in the same prison. The source did not reply to the Government's information within the six-months period.

Turkey

90. The Working Group transmitted eight newly reported cases, which reportedly occurred in 1997, 1998 and 1999. Two cases which occurred in 1999 were sent under the urgent action procedure. Two cases concern persons who were detained at Habur while intending to cross the border to Iraq. Another case concerns a person who allegedly disappeared after having been arrested because of irregularities in his passport at Ipsala Border Control Post. Three cases occurred in the city of Diyarbakir, one in Gungoren district in Istanbul and one in Izmit. One case concerns a prisoner who, according to the prison guards, ran away when he was taken to the hospital for a medical operation.

91. The Government submitted information on 10 outstanding cases. One case was subsequently clarified by the Working Group on the basis of that information, given that the source made no observations within the six-month period. According to the information provided by the Government, the missing person was kept at Amasya prison. Another four cases were clarified given that the sources did not formulate observations to the responses from the Government during the six-month period.

92. With regard to three other cases, the Government reported that the investigations carried out by the Office of the Chief Prosecutor of Izmir had determined that there was no evidence that these persons had been detained by the police. With reference to another case, the missing person had asylum status in Greece since 1984 and probably had illegally entered and left Turkish territory on false travel documents. With regard to another case the missing person is on the wanted list of the police for several offences and has been a fugitive since 28 February 1994.

Uzbekistan

93. The Working Group transmitted seven new cases, one of them under the urgent action procedure. The cases occurred in February and March of 1999 following a series of bombing in Tashkent. According to information received these persons were arrested at night by masked members of the security forces because of their ties to the banned political opposition parties.

Birlik (Unity) and Erk. The missing persons are an acclaimed novelist, the brother of a leader of Erk, the editor of the Erk party newspaper, the deputy chair of the party, a private trader and a former mathematics professor. Another case occurred in July 1999 in Tashkent and concerns a member of the unregistered Independent Human Rights Organization of Uzbekistan (NOPCHU) and the Birlik opposition movement.

94. The Working Group was informed that relatives of people arrested are more reluctant than in the past to speak with human rights activists for fear of further repression.

95. The Government of Uzbekistan provided information on nine cases. The information was not considered sufficient for the Working Group to clarify them. It also stated that since independence, Uzbekistan had achieved impressive results in the field of human rights. The Institute of the Ombudsman in the Parliament of Uzbekistan, the National Centre for Human Rights and other human rights institutions were established during this time.

III. COUNTRIES FROM WHICH THE WORKING GROUP RECEIVED COMMENTS FROM GOVERNMENTS OR NON-GOVERNMENTAL ORGANIZATIONS

Angola

96. Representatives of the Government met with the Working Group at its fifty-eighth session and reported that their country had been at war for 30 years and continued at war. Concerning the four outstanding cases, they stated that a long time had elapsed since the disappearances and that thousands of citizens had disappeared during the war.

Argentina

97. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Argentina.

98. The vast majority of the 3,453 reported cases of disappearance in Argentina occurred between 1975 and 1978 under the military dictatorship, in the context of its so-called war against subversion.

99. As in the past, a number of non-governmental organizations have continued to address themselves to the Working Group with regard to their ongoing quest to have the fate of the persons who disappeared in Argentina brought to light. The Working Group received reports of a campaign of harassment, intimidation and threats against members of non-governmental organizations. The campaign was said to be related to the start of various legal proceedings in Europe against former members of the Argentine armed forces. In this context, the Working Group was informed that Esteban Cuya, a Peruvian citizen and member of the German Coalition against Impunity, was attacked on 17 November 1998 in Buenos Aires. The attackers apparently robbed him of various documents belonging to German citizens in Argentina.

100. The Working Group also learned that the Government refused to cooperate with the judicial authorities of Germany, Spain and Italy in the proceedings referred to above for reasons

of sovereignty, independence and exclusive jurisdiction. With regard to article 20, paragraph 3, of the Declaration, the Group was informed that those responsible for the abduction of children of disappeared persons and children born to mothers in captivity had been neither tried nor sentenced. The Working Group was further informed that no progress had been made in the trial for abduction of minors begun in 1996 in the Federal Administrative Court, where those involved had pleaded that the civilian courts did not have jurisdiction and had invoked the statute of limitations. It would also seem that no progress was made in the proceedings for illegal deprivation of liberty brought in 1998 against members of the armed forces who had previously been pardoned, which included cases of enforced disappearances of various women and children.

101. It was finally alleged that the rights to truth and justice of the families of the disappeared persons and victims of human rights violations continue to be ignored.

102. A representative of the Government of Argentina met with the Working Group at its fifty-ninth session and made reference to two notes verbales transmitted by the Government in response to the allegations of non-compliance with provisions of the Declaration made by non-governmental organizations. The Government reported that on 9 December 1998, in the context of the efforts to trace and return minor children of disappeared persons, the Congress of the Nation passed a law whereby the Historic Reparation Fund for Tracing and Returning Children Abducted and/or born in captivity was created within the legislature. It also reported that nine persons have been prosecuted for the crime of abduction of minors during the period of the former de facto Government (1976-1983). Those currently being prosecuted include Jorge Videla, first President of the de facto regime; Reynaldo B. Bignone, last de facto President; and Emilio Massera, first Chief of the Navy during the de facto Government. Mr. Videla, at present under house arrest, is linked to 10 cases of appropriation of minors and Mr. Massera is being prosecuted as the indirect perpetrator of all the thefts of children that took place in the infamous Navy Engineering School (the ESMA).

103. Investigations into the case of Esteban Cuya Yuyale are continuing. The judicial authorities have ordered the production of an identikit picture and a check of the photographic archives of known criminals to enable Mr. Cuya Yuyale to identify his aggressors; this was carried out at the offices of the Federal Police and investigations are continuing.

104. With regard to cases now pending before the German, Italian and Spanish courts in connection with the forced disappearance of nationals of those countries in Argentinean, the Working Group was reminded that those incidents took place in Argentina. Responding to requests from foreign courts on these cases would diminish the authority of the Argentina courts which have been and are taking the necessary action; it would also be against the universal principle of non bis in idem. Argentina, as a collective entity, has shaped a legislative and judicial solution that has restored peace within the country.

105. Regarding the extraordinary appeal lodged by Carmen Aguiar de Lapaco in an attempt to ascertain what had happened to her daughter, Alejandra Lapaco, missing since 17 March 1977, there is no reason to conclude that the "right to truth", a matter of substance, has been denied when only the procedural means chosen to secure it have been rejected. The Government sent a copy of the Amicable Settlement Agreement signed in Buenos Aires between the Government and Mrs. Aguiar de Lapaco on 15 November 1999. Lastly, the Government of Argentina

advised that on 19 December 1998 the National Congress passed a law awarding a monthly grant of US$ 25,000 to the Grandmothers of the Plaza de Mayo Association to subsidize the costs of locating, identifying and returning abducted children and children born in captivity. The payments began in January 1999 and will continue for two years.

Burundi

106. During the period under review, information concerning developments in Burundi having influence on the phenomenon of disappearances and the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance was received from non-governmental organizations. It was alleged that many cases of enforced disappearance continue to occur following arrests by soldiers resulting from ethnic and political rivalries. It was said that when family members seek information from the police on detained relatives, all knowledge of the missing person is denied in breach of article 10 of the Declaration relating to the provision of accurate information on the detention of persons deprived of liberty to their family members.

Cameroon

107. In response to a request by the Working Group, the Government provided the court judgement concerning a person who was reportedly charged with making false claims and with the use of a false birth certificate. The Government also provided information on the six outstanding cases.

Egypt

108. The Working Group retransmitted seven cases to the Government, updated with new information from the sources. The Government submitted information regarding one outstanding case.

109. Non-governmental organizations pointed out that the Government of Egypt is failing to fulfil its obligations under article 13 of the Declaration to conduct thorough and impartial investigations into all cases of enforced disappearance for as long as the fate of the victim remains unclarified, particularly in the cases in which the victims were detained by members of the State Security Investigation.

El Salvador

110. The Working Group was informed of the successful efforts by a Salvadoran non-governmental organization, the Asociación Pro-Búsqueda de Niños y Niñas Salvadoreños, which has been able to find 98 missing children and reunited them with their families, which are currently in 10 different countries.

111. The Working Group was also informed that the crime of the enforced disappearance of persons had been included in the Salvadoran Penal Code, in articles 364 to 366, under the chapter entitled "Crimes against humanity". The amendment to the penal law had been carried out within the framework of the Agreement on Human Rights of San José and the Peace Agreement, signed in 1991 and 1992, respectively, between the Government of El Salvador and the Farabundo Marti National Liberation Front (FMLN).

Eritrea

112. The Government transmitted information on 21 outstanding cases and requested further information on 13 cases. According to the Government, most of the missing persons are of Ethiopian nationality and were arrested in front of the Ethiopian Embassy in Asmara on 23 August 1998, when the Charge d'affaires of Ethiopia requested the intervention of the Eritrean police because some Ethiopian demonstrators were trying to enter the embassy compound. They subsequently left Eritrea and the International Committee of the Red Cross registered them when they crossed the border.

Kuwait

113. The Working Group retransmitted to the Government one case, updated with new information from the source.

114. The Government stated that the case occurred when the situation in Kuwait was not fully under the control of the legitimate authorities and reiterated its willingness to cooperate in the manner the Working Group deemed appropriate. The family requested the Working Group to continue its efforts to clarify the case. The Government later indicated that a committee composed of senior officials representing the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior and the Department of Public Prosecutions had been established with a view to resolving this case. This committee reportedly had held two meetings to examine all possible ways and means of bringing the case to a satisfactory conclusion and was continuing its investigations into the case. The Government further stated that this case had also received the attention of the National Assembly's Commission for the Defence of Human Rights. Finally, the Government expressed its wish to invite a member of the family of the missing person to visit Kuwait in order to resolve this outstanding case. The family advised the Working Group that on 20 August 1999 it had received the invitation from the Government to pay a visit to the country. However, the invitation was not considered sufficient by the relatives nor was it a solution to the case.

Malaysia

115. The Government informed the Working Group that investigations were continuing regarding the outstanding case of disappearance, which concerns a permanent resident of Malaysia who is neither an asylum-seeker nor an illegal immigrant.

116. The Government of Malaysia also informed the Working Group that the allegations transmitted to it by several non-governmental organizations during 1998 were not true. Malaysia does not distinguish between the country and the region of origin of migrants. The only

distinction made is between legal and illegal migrants. All aliens entering Malaysia should have valid travel documents. Malaysia has not used the Internal Security Act, 1960 to restrict the rights of assembly, free speech, open communications or personal freedoms. The Act, which includes provision for preventive detention, has only been invoked to prevent subversion and organized violence against persons and property in specified areas of the country.

Peru*

117. The Government of Peru provided the Working Group with replies on three individual cases. In one case, the court of Padre Abad had decided to put an end to the judicial investigation, given that the responsibility of members of the security forces could not be established. In the two other cases, a new examination of the register of detainees showed that the missing persons were never arrested or detained by the security forces. However, investigations were continuing into these three cases.

118. The Working Group was informed that the Peruvian Congress had approved legislation in February 1998 incorporating the crime of enforced disappearance in the Penal Code. Enforced disappearance was included in the section on crimes against humanity and would be punishable by a sentence of 15 years in prison. Those accused of the crime would be tried in civilian courts.

119. The Working Group was informed by several non-governmental organizations that thousands of cases of enforced or involuntary disappearances and other grave human rights violations perpetrated by the security forces between 1980 and 1995 continued to go unpunished. It was said that judicial investigations continued to be blocked by the 1995 Amnesty Act and its Articles of Interpretation, which granted members of the armed and security forces immunity from prosecution.

120. The Working Group also received allegations that the government authorities continued to ignore judgements handed down by the Inter-American Court of Human Rights and recommendations by the Inter-American Commission on Human Rights to pay financial compensation or grant other measures of redress to the victims of enforced disappearances or their families. In this regard, mention was made of the disappearance in 1991 of Ernesto Castillo Páez, whose family had still not received the corresponding indemnity. The Working Group also learned that in 1999 the Inter-American Court of Human Rights had taken up several cases concerning Peru and determined, in proceedings carried out with all judicial guarantees and respect for due process and attended by Peruvian judges and lawyers, that the human rights of a number of people had been violated in Peru.

121. The Working Group was also informed that on 7 July 1999 Congress decided to approve the withdrawal of Peru from the jurisdiction of the Inter-American Court of Human Rights with immediate effect. That decision is alleged to constitute a grave backward step in the promotion and protection of human rights in Peru, leaving Peruvians without the possibility of turning to supranational bodies. It is particularly serious given the alleged lack of independence of the

* Mr. Diego García-Sayán did not participate in the decisions relating to this subsection of the report.

judiciary and the Public Prosecutor's Office and the existence of judicial proceedings that systematically disregard minimum international standards of due process. Peru had recognized the Inter-American Court's jurisdiction unconditionally in 1991, without reservations and for an indeterminate period, and by doing so had granted Peruvian citizens the benefit of access to independent international judicial proceedings in cases where their rights had been violated and it had not been possible to obtain suitable redress through the national courts.

122. It was also alleged that the Peruvian Government and Congress's decision to remove the country from the jurisdiction of the Inter-American Court robbed article 205 of the 1993 Constitution of all meaning. That article guarantees the right of citizens of Peru to apply to international tribunals and organizations for redress once internal remedies have been exhausted. Peruvian citizens no longer can have recourse to any international court. This decision was one of a series of legislative and governmental measures that have undermined the rule of law and the protection of human rights. Those measures include: the suspension of the Constitution for nine months in 1992; the enactment of the Amnesty Act and its Articles of Interpretation in 1995; the measures aimed at limiting the independence of the judiciary and the Public Prosecutor's Office adopted in 1996 and of the National Magistrature, adopted in 1998; and Congress's removal from office of three Constitutional Court judges in 1997, leaving the Court unable to carry out its main duties.

123. Although the Working Group has received no reports of enforced or involuntary disappearances since 1995, it has continued to receive allegations concerning the lack of independence of the judiciary and the Public Prosecutor's Office, failings in the rule of law, the non-observance of judicial guarantees and the rules of due process, the judgement of civilians by military tribunals and the competence of those tribunals to hear cases of human rights violations committed by members of the armed forces. It has also been alleged that even in the few cases in which a judicial authority was willing to investigate cases of enforced or involuntary disappearances, it was unable to do so because of lack of cooperation from the members of the armed forces or because of threats made against prosecutors, the victims' lawyers and witnesses. Those threats and acts of harassment and intimidation contravene article 13, paragraph 3, of the Declaration. They have included acts of administrative and fiscal harassment.

124. With regard to articles 16, paragraph 2, and 17 of the Declaration, it has been stated that the Amnesty Act of 1995 and its Articles of Interpretation provide for total impunity, undermining the right to justice, truth and social and financial redress for the relatives of victims of enforced or involuntary disappearances committed in the campaign against the organizations calling themselves the Communist Party of Peru, Shining Path and the Tupac Amaru Revolutionary Movement. Particular concern was also expressed about the high number of cases of enforced or involuntary disappearance submitted to the Working Group and still outstanding.

Uruguay

125. The Government of Uruguay informed the Working Group that it had no new information to convey to it.

126. The Working Group was informed by several non-governmental organizations that members of the armed and security forces accused of having committed enforced or involuntary

disappearances and other grave human rights violations in previous decades had not been brought to court. On the contrary, some had been promoted to important positions in their institutions. It was also alleged that no serious or independent investigation had been made of cases of enforced disappearance.

127. The Working Group was informed that the Immunity from Prosecution Act (Act No. 15848 of 1986), ratified by national referendum in 1989, remained in effect. Enacted during the first Government of President Julio Maria Sanguinetti in December 1986, the Act exempts the members of the armed and security forces from penal sanction for violations of human rights committed up to 1 March 1985, if those violations were committed for political reasons or on orders from a superior.

128. Although article 4 of the Immunity from Prosecution Act stipulates that the executive must inquire into the fate and whereabouts of disappeared persons, that provision has allegedly not been fulfilled. It is said that in practice two military prosecutors were asked to conduct an inquiry, but they themselves had been accused of committing human rights violations. The Working Group was told that their inquiry simply concluded that no evidence or proof had been found of involvement by members of the armed forces in enforced disappearances or other human rights violations.

129. It has also been alleged that senior armed forces officers continued publicly to justify the commission of crimes of enforced or involuntary disappearance as acts of war against subversion, political enemies and dissidents who had to be eliminated. The Working Group was informed that the officers making those statements had not been subjected to any form of punishment. It was also alleged that Uruguay had never acknowledged its own State responsibility in the crimes and cases of enforced disappearance that Uruguayan military officers had committed or been party to in some way in neighbouring countries. It was also stated that unlike other countries, Uruguay had never set up a truth commission or carried out any public or official inquiry into human rights violations committed in the past. Contrary to the provisions of Uruguayan legislation, the State had not applied the decision of the Administrative Court of 25 March 1999 and continued to treat the Immunity from Prosecution Act as a government decree.

130. Furthermore, the Working Group was informed that no inquiry has been launched into statements by Uruguayan Senator Rafael Michelini that there are corpses at the Battalion 13 barracks. The corpses are said to be the remains of victims of enforced disappearance.

IV. COUNTRIES FROM WHICH THE WORKING GROUP RECEIVED NO INFORMATION OR COMMENTS

131. During the period under review, no new cases of disappearances were transmitted by the Working Group to the Governments of the following countries: Afghanistan, Bangladesh, Bolivia, Bosnia and Herzegovina, Burkina Faso, Chad, Croatia, Cyprus, Dominican Republic, Ecuador, Equatorial Guinea, Greece, Guinea, Haiti, Israel, Lao People's Democratic Republic, Lebanon, Mauritania, Mozambique, Nicaragua, Nigeria, Paraguay, the Russian Federation, Rwanda, Saudi Arabia, Seychelles, Syrian Arab Republic, Tajikistan, Thailand, Togo, Uganda, Ukraine, Venezuela, Yemen. No new cases were transmitted to the Palestinian Authority.

132. During the period under review, no new information was received from these Governments, or from the Palestinian Authority, with regard to the outstanding cases. The Working Group is therefore unable to report on the fate and whereabouts of the persons concerned.

V. COUNTRIES IN WHICH ALL REPORTED CASES OF DISAPPEARANCE HAVE BEEN CLARIFIED

South Africa

133. During the period under review, the Working Group clarified the one outstanding case of disappearance on the basis of the information provided by the Government. The source made no observations to the response by the Government within the six-month period.

VI. CONCLUSIONS AND RECOMMENDATIONS

134. The Working Group draws to the attention of all Governments that the full implementation of the Declaration on the Protection of All Persons from Enforced Disappearance is crucial for the prevention and the termination of this human rights violation. In particular, the Working Group wishes to stress the importance of measures aimed at reducing periods of administrative detention to an indispensable minimum, at establishing accessible and up-to-date registers of detainees, and at guaranteeing access and appropriate information to relatives, lawyers and doctors of persons deprived of their liberty.

135. Bearing in mind that the effectiveness of its mandate depends on the cooperation received from Governments, especially of those countries in which enforced disappearance is an ongoing phenomenon, the Working Group appreciates the mechanisms of communication and dialogue that exist with almost all the Governments of the countries concerned, many of which have sent high-level representatives to its sessions.

136. The Working Group wishes to emphasize that it is essential to its activities to continue to receive cooperation from non-governmental organizations concerned with the problem of disappearances. Their activities deserve full support considering that they are a key ingredient for the clarification of cases. The Working Group expresses its appreciation for the cooperation and support it has received from these organizations. At the same time, it notes with deep concern that in some countries these organizations suffer harassment and persecution which prevent them from fulfilling their duties. The Working Group calls upon the concerned Governments to take all measures to guarantee complete protection to these organizations and their members.

137. One of the major achievements of the United Nations human rights programme has been the establishment of thematic mechanisms by the Commission on Human Rights to deal with the essential task of receiving complaints, investigating gross violations of human rights and reporting on their findings publicly. These mechanisms are accessible to everybody and have demonstrated in practice, for the past 19 years, that they can perform an effective role in the protection of human rights throughout the world, especially with regard to persistent and

extensive violations such as enforced disappearances. The non-governmental organizations acknowledge that these mechanisms have certainly acted as a deterrent to a greater increase of this particular international crime.

138. As is well known, the Working Group was the first of these mechanisms to be created and had to play a pioneering role as a channel of communication between victims, families and non-governmental organizations on the one hand, and Governments on the other. Since its establishment in 1980, the Working Group has transmitted more than 49,000 cases to Governments, in many of the 69 countries concerned, new cases have been reported. Although some 5,000 cases have been clarified, more than 46,000 cases are still outstanding.

139. It is crucial for the countries that have a large backlog of outstanding cases to make consistent and effective efforts to identify the fate and whereabouts of the disappeared. At the same time, in agreement with the relatives of the disappeared persons, mechanisms are being explored for the clarification of cases, including acknowledgement of the responsibility of the State and the award of appropriate compensation. The Working Group renews its offer of cooperation to the parties concerned.

140. The Working Group stresses once again that impunity is one of the main causes - probably the root cause - of enforced disappearance, and at the same time one of the major obstacles to clarifying past cases. It is very important that all States comply with the Declaration, which obliges them to make all acts of enforced disappearance offences under domestic criminal law, to promptly, thoroughly and impartially investigate any allegation of enforced disappearance and to bring the perpetrators to justice. In addition, the Working Group strongly urges all States to comply with article 18, which establishes that perpetrators of enforced disappearance shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from criminal proceedings or sanctions.

141. In some countries, the Working Group was unable to achieve progress in clarifying cases because of the lack of appropriate cooperation on the part of the Government. The Governments of Burkina Faso, Burundi, Chad, Equatorial Guinea, Mozambique and Tajikistan have never replied to any requests for information from the Working Group. It recommends once again that the Commission on Human Rights appeal to these countries to cooperate with the Group.

142. It is crucial that, in accordance with the Declaration, Governments take effective legislative, administrative and judicial measures aimed at preventing the occurrence of disappearances in the future. Although article 4 of the Declaration is very clear and applies to all States, i.e. not only to those in which enforced disappearances actually take place, in very few States have the criminal laws been amended in order to ensure that acts of enforced disappearance as such are offences punishable by appropriate penalties. The enactment and effective implementation of such legal measures would be a major step forward towards preventing acts of enforced disappearance.

143. The Working Group wishes to express once again its sincere appreciation to the secretariat for its dedication in the pursuance of the difficult tasks it has to undertake. The Group avails itself of this opportunity to appeal again to the Commission to meet the needs of the secretariat by allocating the appropriate resources, considering that the number of secretariat staff has been dramatically reduced during the last years from nine Professional and four General Service staff members to one Professional and one secretary working on a part-time basis.

VII. ADOPTION OF THE REPORT AND SEPARATE OPINION OF TWO MEMBERS OF THE WORKING GROUP

144. At the last meeting of its fifty-ninth session, on 3 December 1999, the present report was adopted by the members of the Working Group on Enforced or Involuntary Disappearances:

Ivan Tosevski (Chairman-Rapporteur)	(the former Yugoslav Republic of Macedonia)
Agha Hilaly	(Pakistan)
Diego Garcia-Sayan	(Peru)
Manfred Nowak	(Austria)

(Jonas K.D. Foli (Ghana) was not present at the fifty-ninth session).

145. Diego Garcia-Sayán and Manfred Nowak wish to express the following separate opinion to be added to the Working Group's report:

"We strongly object to the fact that the present report had been reduced to the general limit of 32 pages requested by the General Assembly in its resolutions 37/4 C of 22 November 1982 and 47/202 B of 22 December 1992.

"While we fully understand the desire of the Member States and the Secretariat of the United Nations to save funds by reducing the number and the size of its documents, it has been always recognized that this general 32-page limit cannot be applied to thematic mechanisms of the Commission on Human Rights, the annual reports of which should adequately reflect the situation of gross and systematic human rights violations on a country-by-country basis throughout the world. That is why many of the thematic working groups and special rapporteurs in the past have requested and been granted waivers by the Secretariat in this respect. At the same time, the Working Group on Enforced or Involuntary Disappearances during the last years made considerable efforts to streamline its annual reports and in fact reduced them from 172 pages in 1993 to roughly 100 pages in 1998 (the 1999 report of 70 pages is an exception as it has remained incomplete).

"During the present year, the secretariat again has prepared a draft report which, together with the necessary annexes and graphs, would have amounted to some 100 pages. Since the High Commissioner for Human Rights on 8 November 1999 explicitly

requested the Chairman of the Working Group not to exceed the 32-page limit, the Group decided to comply with this request by restructuring the report and drastically reducing its contents. The general part of the report does not contain comments on the draft convention on disappearances or on the implementation of the Declaration, including general comments on its provisions. The country-specific part has been restructured so as to report only on countries in which new cases were reported and or new information was received. Even this information was reduced to an extent which made it difficult for the reader to understand the situation in the respective countries.

"The United Nations Declaration stipulates in article 17 that 'Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the facts and the whereabouts of persons who have disappeared and these facts remain unclarified'. That is why it is important that the Working Group in its annual reports continue to put equal emphasis on 'new' and 'old' cases as long as they have not been clarified. The present report neither adequately reflects the situation of enforced disappearances throughout the world nor the efforts of the members of the Working Group, of its secretariat, of Governments and non-governmental organizations to clarify the fate and whereabouts of almost 50,000 disappeared persons in more than 70 countries of the world.

"We express our hope that the General Assembly, through a request by the Commission on Human Rights, will clarify the page limit for future annual reports of the thematic mechanisms of the Commission."

Annex

DECISIONS ON INDIVIDUAL CASES TAKEN BY THE WORKING GROUP DURING 1999

Country	Cases which allegedly occurred in 1999	Cases transmitted to the Government during 1999		Clarifications by:		Discontinued cases
		Urgent actions	Normal actions	Government	Non-governmental sources	
Algeria	1	-	146	-	-	-
Belarus	1	1	-	-	-	-
Brazil	3	3	1	-	3	-
China	1	1	6	9	-	-
Colombia	27	27	-	5	4	-
Democratic Republic of the Congo	5	5	-	-	2	-
Ethiopia	1	1	-	-	-	-
Guatemala	-	-	-	8	-	-
Honduras	1	1	-	-	1	-
India	-	-	6	5	-	-
Indonesia	50	50	-	1	1	-
Iran (Islamic Republic of)	3	3	1	-	-	-
Jordan	1	1	-	-	-	-
Lebanon	-	-	-	1	-	-
Libyan Arab Jamahiriya	-	-	1	-	-	-
Mexico	1	6	-	16	-	-
Morocco	-	-	2	-	-	-
Nepal	5	6	-	2	-	-
Pakistan	-	3	-	-	-	-
Philippines	1	3	-	1	2	-
South Africa	-	-	-	1	-	-
Sri Lanka	2	7	-	-	2	-
Sudan	3	3	-	-	-	-
Tunisia	-	1	-	1	-	-
Turkey	2	2	6	5	-	-
Uzbekistan	7	1	6	-	-	-

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